

From the:  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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PCT

WRITTEN OPINION

(PCT Rule 66)

Date of mailing (day/month/year)	23.07.2001
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Applicant's or agent's file reference 25708-0004	REPLY DUE	within 2 month(s) from the above date of mailing
International application No. PCT/US00/22610	International filing date (day/month/year) 18/08/2000	Priority date (day/month/year) 18/08/1999
International Patent Classification (IPC) or both national classification and IPC A61K33/40		
Applicant OXO CHEMIE AG et al.		

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I  Basis of the opinion
- II  Priority
- III  Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV  Lack of unity of invention
- V  Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI  Certain document cited
- VII  Certain defects in the international application
- VIII  Certain observations on the international application

3. The applicant is hereby **invited to reply** to this opinion.

**When?** See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also:** For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis. For an informal communication with the examiner, see Rule 66.6.

**If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.**

4. The final date by which the **international preliminary examination report must be established according to Rule 69.2** is: 18/12/2001.

Name and mailing address of the international preliminary examining authority: European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized officer / Examiner Economou, D Formalities officer (incl. extension of time limits) Almalé Murillo, J-A Telephone No. +49 89 2399 8059
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**I. Basis of the opinion**

1. With regard to the **elements** of the international application (Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"):

**Description, pages:**

1-22 as originally filed

**Claims, No.:**

1-7 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description,        pages:
- the claims,        Nos.:
- the drawings,        sheets:

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5.  This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)):

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

### III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

the entire international application,  
 claims Nos. 1-7 with regard to IA,

because:

the said international application, or the said claims Nos. 1-7 with regard to IA (see separate sheet, item 1) relate to the following subject matter which does not require an international preliminary examination (specify):  
**see separate sheet**

the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (specify):

the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

no international search report has been established for the said claims Nos. .

2. A written opinion cannot be drawn due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

- the written form has not been furnished or does not comply with the standard.
- the computer readable form has not been furnished or does not comply with the standard.

**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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Industrial applicability (IA)      Claims 1-7 (see separate sheet, item 1)

2. Citations and explanations  
**see separate sheet**

- 1). a) Claims 1-7 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(i) PCT).  
  
b). For the assessment of the present claims 1-7 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.
- 2). WO-A-9917787 (=D1) discloses the use of WF10 (or of a stabilized chlorite solution) for the treatment of lymphoma (see example 6 and claim 26). Hence, the subject-matter of claim 1 is not novel. The same applies also to the subject-matter of claim 4 which is characterized by an inherent property of the agent. The subject-matter of claim 5 is formally novel but does not involve an inventive step in the light of D1.

On the contrary the subject-matter of claims 2,3,6 and 7 is novel and involves also an inventive step since the treatment of the particular cancer diseases which are characterized by a reduced expression of DCC in macrophages has neither been disclosed nor rendered obvious in the available prior art.